No. 15987

In the United States Court of Appeals for the Ninth Circuit

ELMER J. FAUL AND SYBELL E. FAUL, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

On Petition for Review of the Decision of the Tax Court of the United States

BRIEF FOR THE RESPONDENT

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CITATIONS

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BRIEF FOR THE RESPONDENT

OPINION BELOW

The findings of fact and opinion of the Tax Court (R. 23-33) are reported at 29 T.C. 450.

JURISDICTION

This petition for review (R. 103-106) involves federal income taxes for the taxable year 1952. On December 6, 1954, the Commissioner of Internal Revenue mailed to the taxpayers notice of a deficiency in the total amount of $18,350.23. (R. 11-15.) Within 90 days thereafter and on February 28, 1955, the taxpayers filed a petition with the Tax Court for a

redetermination of that deficiency under the provisions of Section 272 of the Internal Revenue Code of 1939 (R. 3-15.) The decision of the Tax Court was entered December 16, 1957. (R. 33.) The case is brought to this Court by a petition for review filed March 11, 1958. (R. 103-106.) Jurisdiction is conferred on this Court by Section 7482 of the Internal Revenue Code of 1954.

QUESTION PRESENTED

Is there clear error in the Tax Court's findings that taxpayer did not perform services as an informer which extended over a period of 36 months, and hence that he is not entitled to the income allocation benefits of Section 107(a) of the 1939 Code.[1]

STATUTES AND TREASURY DECISION INVOLVED

The statutes and Treasury Decision involved are set forth in the Appendix, *infra.*

STATEMENT

The facts as found by the Tax Court (R. 24-29), and partially stipulated by the parties (R. 20-23), are as follows:

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[1] A second issue below was raised by the Commissioner's contention that taxpayers could not qualify for the benefits of Section 107(a) because the informer's award was not compensation for personal services within the meaning of the statute. The Tax Court did not reach this question since it sustained the Commissioner on the issue presented here. Should this Court disagree with the Tax Court's decision on its present basis, the Commissioner requests that the case be remanded for the Tax Court's consideration and ruling upon the Commissioner's second contention.

Taxpayers Elmer J. Faul and Sybell E. Faul, formerly husband and wife, were divorced after the filing of the petition in this case. Elmer J. Faul (hereinafter referred to as Faul) now resides in San Francisco, California. Sybell E. Faul (hereinafter referred to as Sybell) resides in Carmel, California. Taxpayers filed their joint income tax return for the year 1952 with the District Director of Internal Revenue, San Francisco, California. (R. 24.)

From approximately February, 1941, to March, 1946, Faul was employed full-time as office manager by the R. E. Meyers Company of Salinas, Monterey County, California. The R. E. Meyers Company was a subsidiary of the Salinas Valley Ice Company (also known as Salinas Ice Company, Ltd.) of Salinas, Monterey County, California. (R. 24.)

Following 1942, Faul asked his employer, Ralph Meyers, why he was cheating with his books and exposing himself to a charge of fraud. Faul further said that he did not wish to remain with Meyers and continue to be exposed to such conduct. Meyers regarded the objections lightly and assured Faul that he would "have someone else do it". At that time he hired Emmett Gottenburg, a certified public accountant, to keep the tax records and prepare the tax returns for the above-named companies. (R. 25.)

In 1944, Faul went to San Francisco to talk to "some Government man" about what he would do to protect himself. Faul was told that he should make records and have evidence so that he would not be exposed. (R. 25.)

In order to shield himself Faul, working in his

home and in the office late at night, commenced to compile records in February or March of 1944. He continued with this record making for the remainder of 1944 and during 1945 and part of 1946. (R. 25.)

Faul was discharged by the Meyers Company in March, 1946. Thereafter he determined to submit evidence of the alleged fraud to the Government and on February 22, 1947, he had an interview in San Francisco with John Boland, Chief Field Deputy in the office of the Collector of Internal Revenue, San Francisco, California. At that time he submitted to Boland a memorandum of 45 alleged violations of the internal revenue laws by the Salinas Valley Ice Company. On the same day Faul filed a claim for reward on a Form 211. Additional information supplied by Faul between April and July of 1947 increased the allegations to a total of about 68 or 70. (R. 25-26.)

An Internal Revenue agent, Alan Russell Shurlock, commenced an audit of the Salinas Valley Ice Company in May, 1947. He was in contact with Faul concerning the list of allegations during the summer and fall of 1947. The last discussion between Shurlock and Faul for the purpose of enabling Shurlock to understand the allegations took place in September, October and November, 1947. He submitted his final report on the Salinas Valley Ice Company in July, 1948. The case was then forwarded to the conference section in San Francisco. Shurlock discussed the case with a conferee a number of times. To the best of Shurlock's knowledge Faul never met nor had a conference with the conferee. (R. 26.)

Shurlock, requested by his superiors to assess the value of the information furnished by Faul, reported that the information furnished by the informer was of good value in the investigation. In so doing he had in mind only the 68 allegations. He never received from Faul any documentary evidence, further studies, or copies of documents made by Faul of the books and records of the Salinas Valley Ice Company or the R. E. Meyers Company. (R. 26.)

Shurlock saw Faul during 1948 and 1949, usually at Faul's home. Mrs. Shurlock sometimes accompanied him. When Mrs. Shurlock came they did not all sit together. She played the piano and Shurlock stayed with Faul, not always in the same room. (R. 26-27.) Conversations between Faul and Shurlock were limited to the Government case. The general tenor of these conversations was "When am I going to get my reward?" Often they would reminisce about some of the issues involved concerning which Faul had furnished information and go over the points that had been brought out. On these occasions Faul furnished Shurlock no additional information in connection with the case. (R. 27.)

Shurlock visited Faul at least once during 1950 and 1951. Sybell was present during such a visit when a conversation concerning the fraud penalty against the Meyers Company took place. She could not recall whether Shurlock at that time asked Faul to supply any additional information. (R. 27.)

In May, 1950, Faul was called to San Francisco by Chief Field Deputy Boland. Sybell accompanied Faul to Boland's apartment. When asked on direct ex-

amination if Boland requested any additional information from Faul, Sybell replied, "Well, yes; my husband went into the kitchen * * * and really nothing much took place, because they were talking in the kitchen for a short time and then they came out and we left." Sybell and Faul never saw Boland except in connection with the case. (R. 27.)

During 1950 and 1951, Faul corresponded with officials in the Bureau of Internal Revenue and the Treasury Department concerning his claim for reward. In one such letter Faul stated, "Mr. O'Connell as his local representative Alan Shurlock conferred with me numerous times during first 2 years after I reported this case for information" (*sic*). (R. 27-28.)

On September 10, 1951, William W. Parsons, Administrative Assistant Secretary of the Treasury Department, wrote Faul, informing him that "it has been found necessary to request additional information from the field office in California and your case cannot be concluded until that information is received at headquarters." In April, 1952, Faul received a check in the amount of $68,837.96 as an informer's award. The award was paid from the appropriation for salaries and expenses, Bureau of Internal Revenue. (R. 28.)

The Collection Office of the Bureau of Internal Revenue demanded an estimated tax return and payment of estimated tax with respect to the $68,837.96. Payment of tax pursuant to such estimated tax return was made by the taxpayers in the amount of $25,825.82. (R. 28.) Thereafter taxpayers filed their

income tax return for the year 1952, and in connection with the award claimed the benefit of Section 107, Internal Revenue Code of 1939. Accordingly, the return indicated a tax liability of $17,150.02 and an overpayment of $8,825.46. This overpayment was refunded by the Bureau of Internal Revenue. Thereafter the Commissioner determined that the award received by Faul was not compensation for personal services covering a period of 36 calendar months or more within the meaning of Section 107 of the Internal Revenue Code of 1939, and further that the award was includible in full in gross income for 1952 in accordance with Section 22(a) of the Internal Revenue Code of 1939. The Commissioner determined a deficiency of $18,350.23. (R. 28-29.) The Tax Court sustained the Commissioner's determination. (R. 29-33.)

SUMMARY OF ARGUMENT

Under Section 107(a) of the 1939 Code taxpayers seek an income allocation over a period of years of an informer's award received by the taxpayer-husband in 1952. The statute allows such an allocation only where the income involved constitutes compensation for personal services covering a period of 36 months or more. The Tax Court found that taxpayers had failed to show that the services relating to the informer's award began any earlier than February, 1947, or concluded any later than the fall of the same year. This finding is amply warranted by the record. Hence taxpayers are not entitled to the allocation benefits of Section 107(a), and the decision of the Tax Court should be affirmed.

ARGUMENT

The Tax Court Was Amply Warranted By The Record In Finding That The Taxpayer-Husband's Services Relating To The Informer's Award Did Not Extend Over A Period Of 36 Months Or More; Therefore Taxpayers Are Not Entitled To The Income Allocation Benefits Of Section 107(a) Of The 1939 Code.

An informer's award was received in April, 1952, by taxpayer Faul from the Internal Revenue Service (R. 22) in settlement of his claim for reward under T. D. 5379 (Appendix, *infra*) based upon "information furnished by me"(R. 56). Taxpayers contend that the services relating to the award were rendered over a period of more than 36 months and that they are entitled to a corresponding allocation of the award under Section 107(a) of the Internal Revenue Code of 1939 (Appendix, *infra*).

The purpose of Section 107(a) is "to alleviate tax hardships resulting on long-term workers who receive compensation upon the completion of their services." *Lindstrom* v. *Commissioner*, 149 F. 2d 344, 346 (C. A. 9th). Section 107(a) permits taxpayers who qualify for this exceptional relief to figure their tax as if the compensation had been received ratably over the period of services before the time of receipt. To qualify for relief the taxpayers must prove that they received at least 80 percent of the total compensation for personal services in one taxable year, that the payment was compensation for personal services, and that these services were rendered for a period of 36 months or more from the beginning to the completion of such services. It is clear from the cases

which have interpreted Section 107(a) that it constitutes an exception to the general rule requiring annualization of income and that the taxpayers must come squarely within the letter and the spirit of the law if they are to derive the benefits thereof. *Lindstrom* v. *Commissioner, supra; Van Hook* v. *United States,* 204 F. 2d 25 (C. A. 7th), certiorari denied, 346 U. S. 825; *Sloane* v. *Commissioner,* 188 F. 2d 254 (C. A. 6th); *Smart* v. *Commissioner,* 152 F. 2d 333 (C. A. 2d), certiorari denied, 327 U. S. 804. In *Van Hook* v. *United States, supra,* the Seventh Circuit stated (p. 28):

> The general statutory principle is that a taxpayer on a cash basis must report his income for the year when it is received. Section 107 is a special exemption from that principle. A taxpayer who claims the benefit of that section must show that he comes squarely within the letter and spirit of the Congressional grant.

The Tax Court found that taxpayers have not sustained this burden. (R. 30.) The Tax Court specifically found that taxpayers had not established that Faul performed services for the Bureau of Internal Revenue over the minimum 36 month period, thereby foreclosing their claim for the benefit of Section 107-(a). (R. 32-33.)

It is a well established principle that Tax Court findings will not be disturbed upon review except when clearly erroneous; here, it is submitted, the record fully sustains them. The Tax Court below based its conclusions and findings in part upon its appraisal of the credibility of the wittnesses, includ-

ing one of the taxpayers who testified before it. Upon review due regard is given to this opportunity of the trial court to appraise the credibility of witnesses in front of it, and the reviewing court will not disturb a Tax Court's finding or conclusion unless on the entire evidence it is left with a definite, firm conviction that a mistake has been made. *United States*, v. *Gypsum Co.*, 333 U.S. 364, rehearing denied, 333 U.S. 869; *Baumgardner* v. *Commissioner*, 251 F. 2d 311, 313 (C. A. 9th); *Ferrando* v. *United States*, 245 F. 2d 582, 587-588 (C.A. 9th); *Wener* v. *Commissioner*, 242 F. 2d 938, 944 (C. A. 9th); *Ward* v. *Commissioner*, 244 F. 2d 547, 549-550 (C. A. 9th); *National Brass Works, Inc.* v. *Commissioner*, 205 F. 2d 104, 106-107 (C. A. 9th); Rule 52(a), Federal Rules of Civil Procedure; Section 7482(a) of the Internal Revenue Code of 1954 (formerly Section 1141(a) of the 1939 Code).

A review of the record demonstrates that the findings and conclusions of the Tax Court are not only not clearly erroneous, but are, in fact, completely supported by the record. Taxpayer Faul first began to work for his employer in 1941. (R. 45.) By 1942 Faul became alarmed about the tax practices of his employer and the possibility of Faul's exposure to fraud. Faul complained of it to the employer in 1942 and 1943. The employer assured Faul that he would not have to do it and hired another man, Emmett Gothenburg, to take over. (R. 46.) Faul continued to worry about exposing *himself* to possible tax fraud charges. (R. 48.) As a result in 1944, Faul

went to San Francisco to talk to "some Government man" for the sole purpose of determining what he might do to protect himself against possible future charges. (R. 48, 74-75.) Faul was advised to make records in order to protect himself. (R. 48.)

Beginning with this 1944 visit, the taxpayers contend that Faul was rendering services to the Internal Revenue Service by a supposed supplying of information in that year and the subsequent gathering of information from that time to September, 1947. (Brf. 20-35, Points I, II, III.) Taxpayers make the unsubstantiated assertion that Faul furnished information to the Internal Revenue Service in 1944. (Br. 27, 30, 32.) Although admitting that Faul's 1944 visit was for the purpose of obtaining advice in regard to protecting himself against possible future involvement (B. 21, 27), taxpayers claim whatever the motivation "* * * the information disclosed was used by the Internal Revenue Department for tax collection purposes". (Br. 27; see also, Br. 30, 32). Apparently reliance is placed upon the testimony of taxpayer Sybell (R. 48, 49) for the conjecture that Faul first supplied information to the Internal Revenue Service not later than March, 1944. (Br. 28). A reading of these pages negatives this conjecture. Sybell merely stated that Faul came to San Francisco "to talk to some Government man" in regard to "what he should do to protect himself". (R. 48.) There is no evidence whatsoever in the record as to the identity of this Government man or that he and Faul conferred on any subject other than how Faul might protect himself.

The instant case is substantially similar to *Barker* v. *Shaughnessy* (N.D. N.Y), decided December 3, 1954 (48 A.F.T.R. 1301). The taxpayer informer, Barker, was tax counsel for a corporation. In November, 1942, Barker, using a fictional name, discussed a hypothetical case with the Internal Revenue Service based upon tax irregularities of an unnamed corporation, and inquired as to payment of an informer's award. Barker terminated his employment in February, 1943, and in March, 1943, disclosed his correct identity to the Internal Revenue Service, gave the name of the employer corporation and a list of alleged violations. A revenue agent commenced an investigation in April, 1943, and Barker was consulted until July, 1944, at which time he signed a Form 211 claiming a reward for information furnished on March 3, 1943, and subsequent dates. The investigation was terminated on August 11, 1944, and the case was closed about two years thereafter. Barker died in October 1944, and $75,000 was paid as an informer's award to his widow as executrix of Barker's estate. An attempt was made to claim the benefit of Section 107(a) in regard to this informer's award. The District Court disregarded the initial visit in computing the 36 month requirement of Section 107, and held that the first disclosure of information occurred in 1943, and the requirement would have to be computed from that date. The District Court found that there was no proof that Barker was performing services for the Internal Revenue Service prior to the latter date. The District Court further

stated that the informer, Barker, was being paid only for information and not for investigative efforts.

Taxpayers herein attempt to link the 1944 visit with the subsequent 1947 visit to the Internal Revenue Service (at which time Faul first submitted a memorandum of alleged violations to John Boland of the Internal Revenue Service (R. 21)) by the device of identifying the Government man in 1944 as Boland. Initially taxpayers say Faul "may have seen a Mr. Boland." (Br. 21.) Then the taxpayers actually make the flat statement that Faul consulted "with Boland" in 1944. (Br. 24.) Taxpayers also claim that the advice to prepare self-protective records was given "through Boland". (Br. 27-28.) Taxpayers subsequently exercise more caution and state that Faul saw an employee of the Internal Revenue Service "who very likely was Mr. Boland". (Br. 31.) Finally taxpayers make reference to "Mr. Boland, Deputy Collector in San Francisco (or whosoever the person may have been that husband talked to in the early part of 1944)". (Br. 33.) Taxpayers find support for these statements at pages 48 and 74 of the record. (Br. 24, 31.) The lack of support in the "some Government man" reference has been discussed above, and is obvious from the latter reference, which must be to the following comments of Sybell (R. 74):

> Q. With whom did he speak?
> A. I don't know, because I wasn't with him. He came here, and I thought it was Mr. Boland at the time. Was Mr. Boland with the Internal Revenue?

Every indication in the record is that neither information nor services were given to the Internal Revenue Service in 1944. Nothing in the record even suggests that Faul identified himself or his employer or the locale where he lived. (R. 48, 74.) Undoubtedly, Faul, as did the taxpayer informer in *Barker* v. *Shaughnessy, supra,* merely asked for advice while remaining anonymous. Otherwise the Internal Revenue Service would have made a record of the visit and promptly assigned a revenue agent to investigate the employer. It is also likely that Faul would have filed his claim for reward on Form 211 in 1944 if he had given information at that time. In addition, Sybell testified that Faul did not inform on the company until after he was fired (R. 71) in 1946 (R. 20, 50-51). Finally, Faul's own statements on this point are conclusive. In writing to the Commissioner of Internal Revenue on March 27, 1950, he said, "At the time I reported this case originally to Mr. Boland, I signed a paper protecting me for claim when the matter was thoroughly investigated and settled". (R. 90.) Faul reported the case to Boland and signed and filed Form 211 Claim for Reward on February 22, 1947. (R. 21.) If Faul had given information in 1944, he surely would have claimed 1944 as the date of supplying information when he actually filed the Form 211. Yet, by his own sworn statement, Faul claimed a reward for information furnished on the 22nd day of February, 1947. (R. 56.) In regard to a similar sworn claim for reward, the District Court in *Barker* v. *Shaughnessy, supra,* p. 1303, stated that such a statement "on its face would seem to be

decisive of the dates within which the services were performed since it was upon this claim that the reward was paid."

Preliminary work performed prior to actual contact with the person for whom the services were rendered has not been recognized in computing the time during which personal services were rendered within the meaning of Section 107(a). *Barker* v. *Shaughnessy, supra; Myers* v. *Commissioner*, 11 T. C. 447. Cf. *DeMarco* v. *Commissioner*, 9 T.C. 1188. Specifically, the period of investigative efforts producing a tax informer's information may not be included in the 36-month minimum requirement of Section 107 (a). *Barker* v. *Shaughnessy, supra.*[2]

Furthermore, in assessing the information furnished by Faul as of good value in the investigation, Shurlock unequivocally stated (R. 101) that he had in mind only the 68 allegations received from Faul on and subsequent to February 22, 1947 (R. 21, 79). Shurlock, who certainly knew what Faul had turned over to him, testified (R. 101) and the Tax Court so found (R. 26) that Shurlock *never* received from

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[2] Contrary to taxpayers' contention (Br. 34), the time prior to the initial disclosure in 1947 can not be considered part of the time requirement on the authority of *Smart* v. *Commissioner, supra,* for the court did not so hold. As the Tax Court noted (R. 32), taxpayers rely upon *dicta* in that case but even the *dicta* does not support taxpayers. The court merely said it was natural to think that a trustee, who had been properly appointed as trustee and who had performed as such, was earning his commission progressively even though he does not "earn" it until he had accounted to the court.

Faul any documentary evidence, further studies, or copies of other documents made by him of books and records of the Salinas Valley Ice Company or the R. E. Meyers Company.

In summary to this point, Faul's 24 months of record keeping and the next 12 months during which "he prepared a summary of the copies kept by him of the false records" (Br. 34) can not be included in computing the minimum requirement, and Faul did not render personal services to the Treasury Department for 43 months from March, 1944, through September, 1947, as claimed. (Br. 20-35, Points I, II, III.) The Tax Court properly found that taxpayers had not shown that Faul rendered any service to the Bureau of Internal Revenue before February 22, 1947. (R. 31.)

Inasmuch as the taxpayers have failed to establish the above finding as clearly erroneous, February 22, 1947, becomes a focal point for the computation of time. On February 22, 1947, Faul first supplied information to the Bureau of Internal Revenue and additionally filed the claim for reward for information furnished by him on that day. (R. 21, 56.) Therefore, assuming that Faul was thereafter rendering personal services, taxpayers must prove that these services continued until February, 1950. However, the record discloses that Faul's services were not rendered to February, 1950.

Beginning in March, 1947, Faul was interviewed by Internal Revenue Agent Allen Shurlock and other agents to whom he gave a memorandum of alleged violations by the Salinas Valley Ice Company. (R.

21.) It is not questioned that Shurlock conferred with Faul in connection with the list of allegations until the fall of 1947. (R. 79, 81-82, 83.)

But taxpayers claim that Faul continued to furnish information to the Internal Revenue Service during 1948, 1949, and 1950. (Br. 36.) This contention is based upon the self-serving testimony of taxpayer Sybell (R. 60-61) which, complain taxpayers, was contradicted by Shurlock as to the services allegedly rendered after September, 1947 (Br. 36). It should be noted that the Tax Court, able to appraise the credibility of both witnesses, found that the record established as a fact that Faul supplied no information subsequent to the fall of 1947. (R. 31.) Furthermore, as is obvious from the record references of taxpayers, the conclusions of Sybell, who was not a participant in the conversations or meetings, certainly were not entitled to much weight. Her testimony shows that she knew only in a general way that the men were talking about some phase of either the Salinas Valley Ice Company or the efforts of her husband to obtain a reward. (R. 59-61.) Furthermore, Sybell's memory was hazy in regard to the facts about which she did testify. She testified that Faul received a letter from Mr. Parsons, Assistant Secretary of the Treasury, in the fall of 1950 (R. 63) and that after receipt of the letter, Shurlock visited their home in Carmel in 1950 (R. 64), whereas the record shows that the letter from Parsons is dated September 10, 1951 (Ex. 3, R. 92-93). Although Sybell was present at one conversation between Faul and Shurlock in 1950 or 1951, she could

not remember whether Shurlock asked for additional information. (R. 65-66.)

On the other hand, Shurlock testified that he neither sought nor obtained information from Faul after November, 1947 (R. 81-82, 83, 91, 99), and that all discussions with Faul after that date took the form either of reminiscence about the former employer's fraud or a general discussion regarding Faul's claim for reward (R. 83). However, taxpayers attack Shurlock's truthfulness and reliability because of purported inconsistencies between testimony on direct and cross examination.[3] On cross examination taxpayers asked Shurlock if it was correct that he had "never" talked to Faul about the allegations from September, 1947, to July, 1948, at which time Shurlock filed his final report. Taxpayers seize upon the candor of Shurlock when he answered, "I can't be sure that I never talked to him about it." (R. 99.) Taxpayers then make much of the fact (Br. 38) that Shurlock said he may have talked to Faul in October or November, 1947 (R. 99). It should be noted that upon direct examination, Shurlock had testified that the last time he had discussed the Salinas Valley Ice Company case with Faul for the purpose of understanding the list of allegations

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[3] Taxpayers argue that Shurlock's testimony is not reliable because he was indecisive as to whether his report of July, 1948, contained a recommendation of fraud. (Br. 38-39.) On this point, the record shows that Shurlock's report involved three taxpayers and that it was not possible for the witness to be decisive because the questions were in general terms and did not distinguish or identify the different taxpayers. (R. 97-98.)

was "about September of 1947 * * *. That is within a month or so, but I am not sure." (R. 81-82.)

It is unquestioned that Shurlock submitted his final report on the alleged tax violations of the Salinas Valley Ice Company in July, 1948. (R. 80.) Up to that time, it is conceivable that an Internal Revenue Agent might have a need to review allegations or possible leads with an informer. Once the report was submitted, the case was transferred to a conferee in San Francisco (R. 80), and there is nothing in the record that indicates that Faul ever met or conferred with the conferee. Even assuming *arguendo*, that Faul had rendered personal services to the Bureau of Internal Revenue to the date of Shurlock's final report, only 17 months lapsed between February, 1947 and July, 1948.

There is an unexplained reference in Faul's letter of March 27, 1950, to the Commissioner that two Internal Revenue Agents "conferred with me numerous times during first 2 years after I reported this case for information." (R. 90.) Yet, even if we view this self-serving statement as meaning that these conferences were held for the purpose of giving information rather than the securing of a reward, taxpayers are not helped. Rather it is an admission by Faul that communication for Salinas Valley Ice Company purposes took place during a two year period, at the most. Such a time period would still lack twelve months necessary to meet the minimum requirement.

Apparently the Fauls and the Shurlocks became socially acquainted, and Shurlock testified that he

visited Faul in 1948 and 1949. During the course of these visits, Faul and Shurlock discussed various aspects of the case. (R. 82-83.) The tenor of the conversation was characterized by Shurlock (R. 83) as "When am I going to get my reward?" But Shurlock stated that these conversations were reminiscences and stressed that Faul was not furnishing him any information in connection with the tax violation case. (R. 82, 83.)

As explained above, taxpayers must establish the rendering of services to at least February, 1950, in order to meet the time requirement. Taxpayers seek to show a rendering of services during 1950 by referring to Sybell's testimony (R. 63) concerning a visit by both the Fauls to see Boland in May, 1950, during which time Faul supposedly was asked for "additional information" (Br. 36). When questioned whether Boland requested any additional information, Sybell replied (R. 62-63), "Well, yes; my husband went into the kitchen * * *. And really nothing much took place, because they were talking in the kitchen for a short time and then they came out and we left." There is no evidence as to what was said or that Sybell could even hear the conversation. Although Sybell testified that the Fauls never saw Boland except in regard to the case, the men more than likely were discussing the reward for which Faul was striving. Whether Faul gave Boland additional information about the tax violations of Salinas Valley Ice Company is certainly not established by this testimony. Furthermore, inasmuch as the case against Salinas was closed in early 1950 (R. 81), it

is unlikely that the Internal Revenue Service was still searching for leads.[4]

Taxpayers also claim that personal services were rendered to September 10, 1951, the date of a letter (R. 92-93) Faul received from Mr. Parsons, the Assistant Secretary of the Treasury (Br. 36, 41, 42). The letter informed Faul that "it has been found necessary to request additional information from the field office in California" and that Faul's case could not be concluded until that information was received at headquarters, (R. 92-93.) Firstly, the letter in plain terms states that it was necessary to request additional information from the California field office. As the Tax Court noted (R. 32), there is nothing to indicate that the information was expected from any source other than the field office, and there is no evidence that Faul supplied any other additional information. Secondly, from the terms of the letter, it is improbable that the information requested was related to the tax violations of the former employer, especially since that case was closed in 1950. (R. 81.) Rather, the tenor of the letter indicates a request for information from the field office regarding the merits of the reward sought by taxpayers. The

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[4] Taxpayers' suggestion that the time during which Faul negotiated the settlement of his claim should be includible in the period of service because it was so "held" (Br. 45) in *Love* v. *United States,* 85 F. Supp. 62 (E.D. Mo.), and *Stallforth* v. *Commissioner,* 6 T.C. 140, is based upon a misreading of both cases. The cited cases concern employee's attempts to secure Section 107(a) treatment of compensation for personal services rendered in connection with the settlement of claims for the respective employer.

mere fact that Faul had co-operated and had supplied information concerning the tax violations at a previous time (Br. 42) does not warrant a finding that he was rendering services up to the date the Treasury Department requested additional information, especially when every indication is that the information requested did not concern the tax violations.

In brief, the taxpayers have not established a rendering of services by Faul to the Bureau of Internal Revenue after the fall of 1947. Each of the taxpayers alternate contentions (Br. 44-46) as to various periods fails since each encompasses the time after the fall of 1947. The Tax Court's finding that the taxpayers failed to establish that Faul rendered services for the Bureau of Internal Revenue is not clearly erroneous but is fully supported by the record.

CONCLUSION

It is submitted that the decision of the Tax Court is correct and should be affirmed.

Respectfully submitted,

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AUGUST, 1958

APPENDIX

Internal Revenue Code of 1939:

SEC. 107 [as added by Sec. 220(a), Revenue Act of 1939, c. 247, 53 Stat. 862, and amended by Sec. 139(a) of the Revenue Act of 1942, c. 619, 56 Stat. 798, and by Sec. 119 of the Revenue Act of 1943, c. 63, 58 Stat. 21]. COMPENSATION FOR SERVICES RENDERED FOR A PERIOD OF THIRTY-SIX MONTHS OR MORE AND BACK PAY.

(a) *Personal Services.*—If at least 80 per centum of the total compensation for personal services covering a period of thirty-six calendar months or more (from the beginning to the completion of such services) is received or accrued in one taxable year by an individual or a partnership, the tax attributable to any part thereof which is included in the gross income of any individual shall not be greater than the aggregate of the taxes attributable to such part had it been included in the gross income of such individual ratably over that part of the period which precedes the date of such receipt or accrual.

* * * *

(26 U.S.C. 1952 ed., Sec. 107.)

SEC. 3792. EXPENSES OF DETECTION AND PUNISHMENT OF FRAUDS.

The Commissioner, with the approval of the Secretary, is authorized to pay such sums, not exceeding in the aggregate the sum appropriated therefore, as he may deem necessary for detecting and bringing to trial and punishment persons guilty of violating the internal revenue

laws, or conniving at the same, in cases where such expenses are not otherwise provided for by law.

(26 U.S.C. 1952 ed., Sec. 3792.)

T. D. 5379, 1944 Cum. Bull. 479:

Under and by virtue of the provisions of section 3792 of the Internal Revenue Code * * * the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, does hereby offer for information that shall lead to the detection and punishment of persons guilty of violating the internal revenue laws, or conniving at the same, such reward as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall deem suitable, *but in no case exceeding 10 per cent* of the net amount of taxes, penalties, fines and forfeitures which, by reason of said information, shall be paid irrecoverably to the United States through suit or otherwise. Any person furnishing such information shall be eligible for reward under this Treasury decision unless he was an officer or employee of the Department of the Treasury at the time he came into possession of his information or at the time he divulged it.

The rewards hereby offered are limited in their aggregate to the sum appropriated therefor and shall be paid only in cases not otherwise provided for by law.

Claims for reward under the provisions hereof shall be made on Form 211, * * *.

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